BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ROSEMARY J. MUNOZ	)	
Claimant	)	
VS.	)	
	)	Docket No. 234,757
STORMONT VAIL REGIONAL MEDICAL CENTER	)	
Respondent	)	
Self Insured	)	

ORDER

Claimant requested review of the preliminary hearing Order Denying Compensation dated March 29, 2000, entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

The Administrative Law Judge found claimant's low back condition was not the result of an accident which arose out of and in the course of claimant's employment with respondent and also that claimant had suffered an intervening injury. Therefore, preliminary hearing benefits were denied. Claimant appealed and requested the Appeals Board to review those findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds that the Order Denying Compensation should be affirmed.

The Appeals Board has the jurisdiction and authority to review preliminary hearing findings of whether an accident arose out of and in the course of employment.[1]

The Appeals Board finds claimant's March 11, 1998, accident did not arise out of and in the course of her employment with respondent. At the time of the accident, claimant had not clocked in and was not being paid. She had arrived early and was on respondent's premises to eat breakfast. While on her way to the smoking area, claimant slipped on some ice and fell, injuring her back.

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[1] *See* K.S.A. 1999 Supp. 44-534a.

At the time of the accident claimant was engaged in personal endeavors and was not performing duties in furtherance of respondent's business activities. The accident did not occur while claimant was at work in the employer's service. As such, claimant's accident neither arose out of nor in the course of her employment with respondent.[2]

Claimant argues the "going and coming" rule set forth in K.S.A. 1997 Supp. 44-508(f) mandates the finding that claimant's accident arose out of and in the course of her employment because she was on the respondent's premises. The Appeals Board disagrees. K.S.A. 1997 Supp. 44-508(f) is a codification of the long-standing rule which provides that injuries occurring while traveling to and from employment are generally not compensable. There is a premises exception to that rule. Had claimant's injury occurred while she was on the premises and in route to start her workday, the "going and coming" rule would be applicable. However, that was not the case. Claimant arrived early to eat breakfast in the cafeteria. She then proceeded to the designated smoking area to have a cigarette before work. She was not in the process of going to work.

As she had not yet begun her work day, the personal comfort doctrine is likewise inapplicable.[3]

Because of the above ruling, the Appeals Board does not reach the second issue concerning intervening accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Compensation dated March 29, 2000, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
James C. Wright, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director

[2] *See* Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

[3] *Cf.* Wallace v. Sitel of North America, WCAB Docket No. 242,034 (Oct. 1999).